

INCOME TAX

Federal Change (Individual)

DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

V.

Taxpayer(s)

No.
SSN

Alfred M. Walter
Administrative Law Judge

This matter is before this administrative tribunal as a result of a timely protest by TAXPAYER (hereinafter referred to as the "Taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to her on March 27, 1995. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that she had failed to file an Illinois Income tax return for the years ending December 31, 1987 and 1991, (hereinafter referred to as the "Taxable Years"). The Notice proposes to assess tax, various penalties and interest for income earned for those years, and for an increase in the adjusted gross income for the entire year 1990.

In her protest to the Notice of Deficiency, this taxpayer stated that she was going through a divorce in 1987 and had no personal knowledge of the tax return prepared and filed by her husband, and that the federal government reduced her tax for 1990 and 1991. Therefore, the following issues are being heard on the information provided by the taxpayer in her protest and on the Notice of Deficiency: 1) whether the taxpayer has overcome the *prima facie* correctness of the Notice of Deficiency with sufficient evidence to show that she was an "innocent spouse", and whether she was liable for the taxes assessed by the state from information obtained from the Internal Revenue Service.

Following a review of the documentation in the file it is recommended that these issues be resolved in favor of the Department of Revenue.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which indicates that for the years ending December 31, 1987 and 1991, this taxpayer had failed to file income tax returns in Illinois.

2. This taxpayer failed to file an Illinois Income Tax return for the taxable years. Dept. Ex. 1

3. The taxpayer filed a timely protest to this Notice, and asked that the matter not be heard at a formal hearing. Taxpayer's Protest

4. The taxpayer failed to provide the Department with any documentation showing that she was entitled to relief as an "innocent spouse", or that she owed no tax for the taxable years in issue.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides in pertinent part:

§904 Deficiencies and Overpayments.

* * *

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set for the amount of tax and penalties proposed to be assessed.

35 ILCS 5/904(b)

The taxpayer offered nothing at the hearing in the way of evidence or facts not contained in her protest. Therefore, the rebuttal to the Department's *prima facie* case in this cause is found in the taxpayer's representations as found in her written protest. These assertions, without any supporting documentation, are not sufficient to overcome the *prima facie* correctness of the Department's Notice of Deficiency. See, Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968) (In order to overcome the *prima facie* correctness of the Department's correction of returns, taxpayer "must produce competent evidence, identified with their books and records" showing that the Department's returns are incorrect.) Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determinations.

A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App.3d 826 (1st Dist. 1988)

Therefore, based upon the evidence of record, it is my recommendation that the Notice of Deficiency issued in this cause be finalized, as issued.

Alfred Walter
Administrative Law Judge